S T A T E   O F   N E W   Y O R K

5438

2011-2012 Regular Sessions

I N S E N A T E

May 20, 2011

Introduced by Sens. YOUNG, LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the real property tax law, in relation to tax exemption for new multiple dwellings

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The opening paragraph of item (A) of subparagraph (iv) of paragraph (a) of subdivision 2 of section 421-a of the real property tax law, as amended by chapter 618 of the laws of 2007, is amended to read as follows:

Unless excluded by local law, in the city of New York, the benefits of this subparagraph shall be available in the borough of Manhattan for new multiple dwellings on tax lots now existing or hereafter created south of or adjacent to either side of one hundred tenth street [which] THAT commence construction after July first, nineteen hundred ninety-two and before December twenty-eighth, two thousand [ten] FOURTEEN only if:

S 2. Subparagraph (ii) of paragraph (c) of subdivision 2 of section 421-a of the real property tax law, as amended by chapter 618 of the laws of 2007, is amended to read as follows:

(ii) construction is commenced after January first, nineteen hundred seventy-five and before December twenty-eighth, two thousand [ten] FOURTEEN provided, however, that such commencement period shall not apply to multiple dwellings eligible for benefits under subparagraph (iv) of paragraph (a) of this subdivision;

S 3. Paragraph (d) of subdivision 2 of section 421-a of the real property tax law, as amended by chapter 692 of the laws of 1995, is amended to read as follows:

(d) [As of July first, nineteen hundred seventy-five] FOR ANY BUILDING GRANTED TAX EXEMPTION PURSUANT TO THIS SECTION BY THE LOCAL HOUSING AGENCY ON OR SUBSEQUENT TO JULY FIRST, NINETEEN HUNDRED SEVENTY-ONE, if

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD11709-01-1

the aggregate floor area of commercial, community facility and accessory use space exceeds twelve [per cent] PERCENT of the aggregate floor area, as defined herein, [of any building granted tax exemption pursuant to this section on or subsequent to July first, nineteen hundred seventy-one] OF SUCH BUILDING, tax exemption shall be reduced by an amount equal to the [per cent] PERCENT of the aggregate floor area by which the aggregate floor area of commercial, community facility and accessory use space exceeds twelve [per cent] PERCENT of the aggregate floor area of the building provided, however, that accessory use space shall not include accessory parking located not more than twenty-three feet above the curb level and provided, further, that whenever a building containing two or more separately assessed parcels of real property has commercial, community facility and accessory use space in excess of such twelve percent, the tax arising out of the reduction in exemption for such excess space shall not be apportioned pro rata among all of the separately assessed parcels in the building but shall be applied first to those separately assessed parcels which are unrelated to the residential use of the building; and only after such unrelated parcels are fully taxable shall the remainder of such tax be apportioned pro rata among the remaining separately assessed parcels and provided further, that no such exemption for commercial, community facility and accessory use space shall be applicable prior to July first, nineteen hundred seventy-five. To be eligible for exemption under this section such construction shall take place on land which, thirty-six months prior to the commencement of such construction, was vacant, predominantly vacant, under-utilized, or improved with a non-conforming use, provided that if such new multiple dwelling displaces or replaces a building or buildings containing more than twenty-five occupied dwelling units in existence on December thirty-first, nineteen hundred seventy-four and administered under the local emergency housing rent control act, the rent stabilization law of nineteen hundred sixty-nine, or the emergency tenant protection act of nineteen seventy-four, such new multiple dwelling shall not be eligible in the city of New York unless a certificate of eviction has been issued for any of the displaced or replaced units pursuant to the powers granted by the city rent and rehabilitation law, and that the sale, transfer or utilization of air rights over residential buildings that were not demolished shall not be construed as a displacement or replacement of the dwelling units contained within those buildings within the meaning of this subdivision.

S 4. Subdivision 3 of section 421-a of the real property tax law, as amended by chapter 857 of the laws of 1975, the opening paragraph as amended by chapter 655 of the laws of 1978, paragraph (iv) as amended by chapter 703 of the laws of 1976, and such section as renumbered by chapter 110 of the laws of 1977, is amended to read as follows:

3. Application forms for exemption under this section shall be filed with the [assessors between February first and March fifteenth and, based on the certification of the local housing agency as herein provided, the assessors shall certify to the collecting officer the amount of taxes to be abated] LOCAL HOUSING AGENCY, WHICH SHALL ISSUE A CERTIFICATE CERTIFYING THE APPLICANT'S ELIGIBILITY PURSUANT TO SUBDIVISIONS TWO AND FOUR OF THIS SECTION. If there be in a city of one million population or more a department of housing preservation and development, the term "housing agency" shall mean only such department of housing preservation and development. [No such application shall be accepted by the assessors unless accompanied by a certificate of the local housing agency certifying the applicant's eligibility pursuant to

subdivisions two and four of this section.] No such certification of eligibility shall be issued by the local housing agency until such agency determines the initial adjusted monthly rent to be paid by tenants residing in rental dwelling units contained within the multiple dwelling and the comparative adjusted monthly rent that would have to be paid by such tenants if no tax exemption were applicable as provided by this section. The initial adjusted monthly rent will be certified by the local housing agency as the first rent for the subject dwelling units. A copy of such certification with respect to such units shall be attached by the applicant to the first effective lease or occupancy agreement. The initial adjusted monthly rent shall reflect the full tax exemption benefits as approved by the agency.

The agency shall determine the amount of the initial adjusted monthly rent as follows:

(i) The total project cost shall be determined by adding the following items:

(a) Land acquisition cost or purchase price, if purchased within two years prior to the date on which construction or alteration is commenced; or land acquisition cost or purchase price or an appraisal prepared by a qualified independent appraiser, in such form as is acceptable to the agency, if purchased more than two years prior to such date. Land acquisition cost or purchase price, where used, shall be certified to by an independent certified public accountant;

(b) Costs incurred in the process of preparing the site for construction, including but not limited to operating losses, relocation expenses, demolition expenses and carrying charges, such costs to be certified by an independent certified public accountant to a date not more than ninety days prior to the filing of an application for certification of eligibility and the balance of such costs to be estimated;

(c) Construction costs for constructing or rehabilitating the multiple dwelling as determined by the agency in accordance with subdivision four of this section, plus such amount, if any, representing unique and special costs as may be allowed by the agency for a particular multiple dwelling;

(d) An allowance for estimated off-site costs, including but not limited to architects, engineers and legal fees, interest and taxes during construction, insurance, title and mortgage fees, as determined by the agency in accordance with subdivision four of this section, and

(e) such other amounts as are ordinarily and customarily incurred in connection with the construction or rehabilitation of a multiple dwelling, as determined by the agency in accordance with subdivision four of this section.

(ii) The total expenses of the multiple dwelling shall be determined by adding the following items:

(a) The amount that the agency determines to be the reasonable annual costs for the continuing maintenance and operation of the multiple dwelling in accordance with subdivision four of this section;

(b) The amount that the agency determines to be an appropriate annual provision for vacancies, contingency reserves and management fees in accordance with subdivision four of this section.

(c) The projected real property taxes to be levied on the multiple dwelling and the land on which it is situated at the time of estimated initial occupancy;

(d) Fourteen (14) [per cent] PERCENT of the total project cost, as hereinabove defined, which amount will include all expenses for debt service; and

(e) Deducting from said total the estimated annual income to be derived from any commercial, community facility or accessory use space in the building.

(iii) The total expenses shall be divided by the room count to provide the adjusted monthly rent per room per month.

(iv) The adjusted monthly rent per room per month shall be multiplied by the room count of each rental dwelling unit to provide the initial adjusted monthly rent for such dwelling unit. The agency may allow adjustments in the initial adjusted monthly rent for any particular dwelling units provided that the total of the initial adjusted monthly rents for all of the rental dwelling units in a multiple dwelling shall not exceed the total expenses of such multiple dwelling.

The agency shall determine the estimated comparative adjusted monthly rent that would have to be paid if no tax exemption were applicable as provided by this section by adding to the adjusted monthly rent for each dwelling unit as hereinabove computed an amount equal to (a) the difference between the projected real property taxes which would be levied on the multiple dwelling and the land on which it is situated at the time estimated initial occupancy if no tax abatement were applicable as provided by this section and the projected real property taxes hereinabove utilized in connection with the computation of total expenses; (b) divided by the room count of the building as per this section; and (c) multiplied by the applicants approved room count of each such dwelling unit.

The local housing agency may promulgate rules and regulations to carry out the provisions of this section, not inconsistent with the provisions hereof, [and may require a reasonable filing fee in an amount provided by such rules and regulations] INCLUDING, BUT NOT LIMITED TO, RULES AND REGULATIONS RELATING TO THE FILING FEE AUTHORIZED PURSUANT TO PARAGRAPH B OF SUBDIVISION FOUR OF THIS SECTION. NOTWITHSTANDING THE PROVISIONS OF ANY GENERAL, SPECIAL OR LOCAL LAW, THE LOCAL HOUSING AGENCY IN A CITY OF ONE MILLION OR MORE MAY REQUIRE THAT APPLICATIONS FOR EXEMPTION UNDER THIS SECTION THAT ARE FILED ON OR AFTER THE EFFECTIVE DATE OF THIS ACT BE FILED ELECTRONICALLY.

S 5. Paragraph b of subdivision 4 of section 421-a of the real property tax law, as added by chapter 744 of the laws of 2004, is amended to read as follows:

b. The local housing agency [may] SHALL require a filing fee not to exceed the greater of (i) four-tenths of one percent of the total project cost, or (ii) if the building will be owned as a cooperative or condominium, four-tenths of one percent of the total project cost or four-tenths of one percent of the total project sell-out price stated in the last amendment to the offering plan accepted for filing by the attorney general of the state, at the option of the applicant. Such total project cost or total project sell-out price shall be determined pursuant to rules promulgated by the local housing agency. Notwithstanding the foregoing, the local housing agency may promulgate rules imposing an additional fee if an application, or any part thereof, or submission in connection therewith, is defective and such defect delays the processing of such application or causes the local housing agency to expend additional resources in the processing of such application.

S 6. Subparagraph (i) of paragraph (a) of subdivision 6 of section 421-a of the real property tax law, as added by chapter 110 of the laws of 2005, is amended to read as follows:

(i) "Covered project." (A) A new building located within the Greenpoint - Williamsburg waterfront exclusion area, (B) two or more buildings which are part of one contiguous development entirely located within the Greenpoint - Williamsburg waterfront exclusion area, (C) two or more buildings which are located within the Greenpoint - Williamsburg waterfront exclusion area and are part of a single development parcel specifically identified in section [62-831] 62-931 of the local zoning resolution, or (D) where so authorized in writing by the local housing agency, one or more buildings located within the Greenpoint - Williamsburg waterfront exclusion area and one or more buildings located outside the Greenpoint - Williamsburg waterfront exclusion area but within Community District Number One in the borough of Brooklyn. The cumulative number of affordable units located outside the Greenpoint - Williamsburg waterfront exclusion area in all covered projects described in clause (D) of this subparagraph shall not exceed two hundred. A building located outside the Greenpoint - Williamsburg waterfront exclusion area which is part of a covered project described in clause (D) of this subparagraph shall not contain any affordable units with respect to which an application pending before a governmental entity on the effective date of this subdivision or a written agreement in effect on the effective date of this subdivision provided for the development of such affordable units.

S 7. This act shall take effect immediately, provided, however, that the amendments to item (A) of subparagraph (iv) of paragraph (a) of subdivision 2 and subparagraph (ii) of paragraph (c) of subdivision 2 of section 421-a of the real property tax law made by sections one and two of this act shall be deemed to have been in full force and effect as of December 28, 2010.